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18 CESAR FLORES, ANTONIO AGUILAR,
19 et al.

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

22 JOHN JOSEPH SAINT JOHN, JULIO
23 CESAR FLORES, ANTONIO
24 AGUILAR, individually and on behalf
25 of all others similarly situated,

26 Plaintiffs,

27 v.

28 TATITLEK SUPPORT SERVICES,
INC., a corporation,
TATITLEK/FORCE
PREPAREDNESS TRAINING
SERVICES, INC., a corporation, and
DOES 1 through 75, inclusive,

Defendants.

CASE NO. EDCV 08-01909-JZ(RZx)

(San Bernardino Superior Court Case
No. CIVMS 800936)

**FIRST AMENDED CLASS
ACTION COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES FOR:**

1. VIOLATION OF LABOR CODE
§§ 510 and 1198;
2. VIOLATION OF LABOR CODE
§§ 226(a);
3. VIOLATION OF LABOR CODE
§§ 201 AND 202;
4. VIOLATION OF LABOR CODE

§§ 226.7(a) AND 512(a);

**5. BREACH OF ORAL
CONTRACT**

**6. CONVERSION AND THEFT OF
LABOR;**

**7. VIOLATION OF LABOR CODE
§ 2802;**

**8. VIOLATION OF IWC WAGE
ORDERS;**

**9. COMMON COUNTS FOR
WORK, LABOR AND SERVICES
PROVIDED**

**10. VIOLATION OF BUSINESS
AND PROFESSION CODE §§
17200, ET SEQ.**

DEMAND FOR TRIAL BY JURY

Plaintiffs JOHN JOSEPH SAINT JOHN, JULIO CESAR FLORES,
AND ANTONIO AGUILAR (hereinafter collectively referred to as
“PLAINTIFFS”), individually and on behalf of all others similarly situated,
complain and allege as follows:

INTRODUCTION

1. Defendants TATITLEK SUPPORT SERVICES, INC. and
TATITLEK/FORCE PREPAREDNESS TRAINING SERVICES, INC.
(collectively referred to hereinafter as “TATITLEK” or “Tatitlek”) provide the
United States Marine Corps in Twentynine Palms, California, with personnel
(referred to as “Role Players” by defendant TATITLEK) to interact with Marine
Corps troops in realistic pre-deployment training exercises during which defendant
TATITLEK’s personnel re-created what it will be like for the U.S. troops to patrol
in an Iraqi Village.

2. Defendant TATITLEK engaged in the unlawful wage and hour

1 practice of misclassifying the personnel that it provided to the Marine Corps at
2 Twentynine Palms as independent contractors (rather than as its employees) so that
3 it could avoid having to pay employer taxes or overtime wages. As a result of
4 defendant TATITLEK's mis-classification, defendant TATITLEK avoided
5 payment of state and federal taxes that should have been borne by it. Similarly, as
6 a result of defendant TATITLEK's mis-classification, defendant TATITLEK failed
7 to provide its employees (including those individuals who should have been
8 classified as employees) with itemized wage statements as required by Labor Code
9 § 226. As a result of defendant TATITLEK's knowingly and intentionally failure
10 to provide its employees (including those individuals who should have been
11 classified as employees) with their itemized wage statements, each Plaintiff
12 suffered injury.

13 3. Defendant TATITLEK also engaged in the unlawful wage and
14 hour practice of failing to pay its employees (including those individuals who
15 should have been classified as employees but were unlawfully classified as
16 independent contractors) prevailing wages and benefits.

17 4. Defendant TATITLEK also engaged in the unlawful wage and
18 hour practice of failing to pay its non-exempt employees (including those
19 individuals who should have been classified as employees but were unlawfully
20 classified as independent contractors) overtime.

21 5. Defendant TATITLEK also engaged in the unlawful wage and
22 hour practice of causing its employees (including those individuals who should
23 have been classified as employees but were unlawfully classified as independent
24 contractors) to work more than six days in seven in violation of Labor Code §§ 551
25 and 552.

26 6. Defendant TATITLEK violated Section 5 of California's IWC
27 Wage Order (i.e., California's "reporting time" or "show up" pay law) by requiring
28 its employees to report to work on "Day Zero" of the training exercises and not

1 paying them the greater of (1) half the employee's usual or scheduled day's work
2 (up to a maximum of four hours), or (2) two hours at the employee's regular rate of
3 pay.

4 7. Defendant TATITLEK engaged in the unlawful wage and hour
5 practice of either failing to ensure that its employees took or not allowing its non-
6 exempt employees (including those individuals who should have been classified as
7 employees but were unlawfully classified as independent contractors) to take: (1)
8 an uninterrupted 30 minute meal period when employed for a work period of more
9 than 5 hours per day as required by Labor Code §§ 512 and 226.7; (2) a second
10 uninterrupted 30 minute meal period when employed for a work period of more
11 than 10 hours per day as required by Labor Code §§ 512 and 226.7; and (3) a ten
12 (10) minute rest period for every four (4) hours worked. In this regard, Defendant
13 TATITLEK knew or should have known that its employees, including
14 PLAINTIFFS, were not being provided with and not being allowed to take their
15 meal and rest periods and defendant TATITLEK either did not take steps to
16 address the situation or affirmatively allowed these violations to occur.

17 8. Defendant TATITLEK violated Labor Code Section 201 by not
18 immediately paying its employees when it released them after they completed each
19 specific job assignment for which they were hired. Accordingly, pursuant to Labor
20 Code Section 203, defendant TATITLEK is liable to each such employee for a
21 waiting time penalty of up to thirty (30) day's pay for each such job assignment.

22 23 **JURISDICTION AND VENUE**

24 9. The Court has personal jurisdiction over the defendants because
25 they are residents of and/or doing business in the State of California.

26 10. Venue is proper in this County in accordance with § 395(a) of
27 the California Code of Civil Procedure because Defendants entered into contracts
28 with its employees in this County. Venue is also proper in this County pursuant to

1 California C.C.P. § 395.5 because Defendants are corporations and a substantial
2 portion of the underlying transactions and events complained of herein occurred in
3 this County and Defendants have received substantial compensation from such
4 transactions and business activity in this County.

5
6 **PARTIES**
7

8 11. Plaintiff JOHN JOSEPH SAINT JOHN is an individual who, at
9 relevant times during the events alleged herein, resided in Los Angeles County,
10 California. Plaintiff JOHN JOSEPH SAINT JOHN was, at all relevant times
11 mentioned herein, an “employee” (within the meaning of the California Labor
12 Code) of Defendant TATITLEK.

13 12. Plaintiff JULIO CESAR FLORES is an individual who, at
14 relevant times during the events alleged herein, resided in Los Angeles County,
15 California. Plaintiff JULIO CESAR FLORES was, at all relevant times mentioned
16 herein, an “employee” (within the meaning of the California Labor Code) of
17 Defendant TATITLEK.

18 13. Plaintiff ANTONIO AGUILAR is an individual who, at
19 relevant times during the events alleged herein, lived in Los Angeles County,
20 California. Plaintiff ANTONIO AGUILAR was, at all relevant times mentioned
21 herein, an “employee” (within the meaning of the California Labor Code) of
22 Defendant TATITLEK.

23 14. PLAINTIFFS are informed and believe, and thereon allege, that
24 defendant TATITLEK SUPPORT SERVICE, INC. is and, at all times mentioned
25 herein, was a corporation or other business entity qualified to and doing business in
26 the State of California. PLAINTIFFS are further informed and believe, and
27 thereon allege, that defendant TATITLEK is and was, at all relevant times
28 mentioned herein, an “employer” within the meaning of the California Labor Code.

1 15. PLAINTIFFS are informed and believe, and thereon allege,
2 that defendant TATITLEK/FORCE PREPAREDNESS TRAINING SERVICES,
3 INC. is and, at all times mentioned herein, was a corporation or other business
4 entity qualified to and doing business in the State of California. PLAINTIFFS are
5 further informed and believes and thereon allege, that defendant
6 TATITLEK/FORCE PREPAREDNESS TRAINING SERVICES, INC. is and was,
7 at all relevant times mentioned herein, an “employer” within the meaning of the
8 California Labor Code.

9 16. PLAINTIFFS are informed and believe, and thereon allege, that
10 defendant TATITLEK/FORCE PREPAREDNESS TRAINING SERVICES, INC.
11 is either a wholly owned subsidiary or division of defendant TATITLEK
12 SUPPORT SERVICE, INC. and that defendants TATITLEK/FORCE
13 PREPAREDNESS TRAINING SERVICES, INC. and TATITLEK SUPPORT
14 SERVICE, INC. have common management, centralized control of labor relations,
15 common ownership and financial control, overlapping employees and interrelated
16 operations such that these entities operated as a single, integrated enterprise with
17 regard to the employment of PLAINTIFFS. Alternatively, PLAINTIFFS are
18 informed and believe and thereon alleges defendants TATITLEK/FORCE
19 PREPAREDNESS TRAINING SERVICES, INC. and TATITLEK SUPPORT
20 SERVICE, INC. were their joint employers.

21 17. The true names and capacities, whether corporate, associate,
22 individual or otherwise of defendants DOES 1 through 75, inclusive, are unknown
23 to PLAINTIFFS, who therefore sues said defendants by such fictitious names.
24 Each of the defendants designated herein as a DOE is negligently or otherwise
25 legally responsible in some manner for the events and happenings herein referred
26 to and caused injuries and damages proximately thereby to PLAINTIFFS, as herein
27 alleged. PLAINTIFFS will file a Doe Amendment(s) and/or seek leave of Court
28 to amend this Complaint to show the true names and capacities of the DOE

1 defendants when the same have been ascertained.

2 18. At all times mentioned herein, defendants, and each of them,
3 were the agents, representatives, employees, successors and/or assigns, each of the
4 other, and at all times pertinent hereto were acting within the course and scope of
5 their authority as such agents, representatives, employees, successors and/or
6 assigns.

7 **FACTUAL ALLEGATIONS**

8 19. Pursuant to a contract with the United States, defendant
9 TATITLEK hired individuals to work at the Marine Corps base at Twentynine
10 Palms, California as Role Players. Although defendant TATITLEK misclassified
11 these individuals as independent contractors, they were actually employees.
12 Among other things, these employees of defendant TATITLEK were employed to
13 interact with U.S. Marine Corps troops in realistic pre-deployment training
14 exercises during which defendant TATITLEK's personnel re-created what it will
15 be like for the troops to patrol in an Iraqi Village. PLAINTIFFS were such
16 employees. At no time before, during, or after these periods of employment did
17 MR. SAINT JOHN, MR. FLORES, MR. AGUILAR, or any of the other class
18 members enter into a written agreement with defendant TATITLEK with respect to
19 the taking of an on-the-job paid meal period.

20 20. Defendant TATITLEK, seeking to circumvent and avoid its
21 legal obligation to (a) pay overtime and provide meal and rest breaks to its
22 employees and (b) remit employer taxes to the taxing authorities of the United
23 States and California, misclassified these employees, including PLAINTIFFS, as
24 independent contractors, rather than as employees. As such, defendant
25 TATITLEK unlawfully not only failed to deduct payroll taxes from the wages of
26 Plaintiffs but also failed to pay the employer payroll taxes. As a result of
27 defendant TATITLEK's unlawful decision to misclassify these employees,
28 including PLAINTIFFS, as independent contractors rather than employees, these

1 employees, including PLAINTIFFS, were forced to incur more liability for social
2 security taxes than they would have if they been properly classified as employees.

3 21. Similarly, as a result of defendant TATITLEK's mis-
4 classification, defendant TATITLEK failed to provide its employees, including
5 PLAINTIFFS, with itemized wage statements as required by Labor Code § 226.

6 22. Defendant TATITLEK failed to pay its employees, including
7 PLAINTIFFS, prevailing wages and benefits.

8 23. Defendant TATITLEK failed to pay its employees, including
9 PLAINTIFFS, overtime.

10 24. Defendant TATITLEK engaged in the unlawful wage and hour
11 practice of causing its employees, including PLAINTIFFS, to work more than six
12 days in seven in violation of Labor Code §§ 551 and 552.

13 25. Defendant TATITLEK engaged in the unlawful wage and hour
14 practice of either failing to provide or not allowing its non-exempt employees
15 (including PLAINTIFFS and the class members) to take: (1) an uninterrupted 30
16 minute meal period when employed for a work period of more than 5 hours per day
17 as required by Labor Code §§ 512 and 226.7; (2) a second uninterrupted 30
18 minute meal period when employed for a work period of more than 10 hours per
19 day as required by Labor Code §§ 512 and 226.7; and (3) a ten (10) minute rest
20 period for every four (4) hours worked. In this regard, Defendant TATITLEK
21 knew or should have known that its employees were not being provided with and
22 not being allowed to take their meal and rest periods and defendant TATITLEK
23 did not take steps to address the situation.

24 26. Defendant TATITLEK violated Section 5 of California's IWC
25 Wage Order (i.e., California's "reporting time" or "show up" pay law) by requiring
26 its employees to report to work on "Day Zero" of the training exercises and not
27 paying them the greater of (1) half the employee's usual or scheduled day's work
28 (up to a maximum of four hours), or (2) two hours at the employee's regular rate of

1 pay.

2 27. Defendant TATITLEK violated Labor Code Section 201 by
3 not immediately paying its employees when it released them after they completed
4 each specific job assignment for which they were hired. Accordingly, pursuant to
5 Labor Code Section 203, defendant TATITLEK is liable to each such employee for
6 a waiting time penalty of up to thirty (30) day's pay for each such job assignment.

7 28. Defendant TATITLEK required its employees to spend the
8 night in re-worked Connex boxes that did not have electricity or lighting. As a
9 consequence, the employees necessarily and reasonably had to purchase lanterns,
10 flashlights, and batteries to use for lighting at night. Defendant TATITLEK
11 violated Labor Code Section 2802 by not indemnifying the employees for these
12 expenses.

13 29. California law provides that sleeping time while on duty
14 constitutes compensable "hours worked" unless both of the following requirements
15 are satisfied: (1) the employer and employee enter into an agreement to exclude
16 from hours worked a bona fide regularly scheduled sleeping period; and (2) the
17 following non-waiveable conditions are satisfied: (a) the employee is able to enjoy
18 an uninterrupted 5 hours of sleep; and (b) any interruptions of the sleeping period
19 by a call to duty are counted as hours worked. Because defendant Tatitlek neither
20 entered into such an agreement with its employees nor satisfied the non-waiveable
21 conditions (i.e., its employees were neither able to enjoy an uninterrupted 5 hours
22 of sleep nor were they compensated for time worked when their sleep was
23 interrupted by a call to duty), it was obligated to, but did not, compensate its
24 employees for sleep time.

25 30. PLAINTIFFS are informed and believes and thereon allege that
26 at all times herein mentioned, defendant TATITLEK was advised by skilled and
27 knowledgeable lawyers, human resources personnel and other professionals,
28 employees and advisors who were aware of California's employment wage and

1 hour laws, about the requirements of California law.

2 31. Defendant TATITLEK knew or should have known that
3 PLAINTIFFS and other members of the class were improperly classified as
4 independent contractors, were not receiving prevailing wages, were not being paid
5 overtime, were not receiving itemized wage statements, were not receiving legally
6 mandated meal and rest periods, were not receiving one hour of pay on the
7 occasions when they did not receive or were not allowed to take their legally
8 mandated meal and rest periods, did not receive their total wages owed following
9 the termination of their employment, because, among other things, defendant
10 TATITLEK's officers, managers, supervisors, agents and employees were
11 responsible for and/or witnessed such events.

12
13 **PLAINTIFF SAINT JOHN'S FACTUAL ALLEGATIONS**
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15 32. In or about April 2006, MR. SAINT JOHN began employment
16 with Defendant TATITLEK. MR. SAINT JOHN's employment lasted through
17 about March 2008. At no time before, during, or after these periods of
18 employment did MR. SAINT JOHN enter into a written agreement with defendant
19 TATITLEK with respect to the taking of an on-the-job paid meal period.

20 33. During his employment, MR. SAINT JOHN was a "role
21 player."

22 34. During his employment, MR. SAINT JOHN was unlawfully
23 treated by Defendant TATITLEK as an independent contractor and not as an
24 employee. As a result of defendant TATITLEK's mis-classification, defendant
25 TATITLEK did not pay all of the employment-related taxes (including social
26 security taxes) that should have been borne by it. Similarly, as a result of defendant
27 TATITLEK's mis-classification, defendant TATITLEK failed to provide MR.
28 SAINT JOHN with itemized wage statements as required by Labor Code § 226.

1 35. During his employment, defendant TATITLEK failed to pay
2 MR. SAINT JOHN prevailing wages and benefits.

3 36. During each period of employment, MR. SAINT JOHN worked
4 more than 8 hours in a day and more than 40 hours in a week and defendant
5 TATITLEK failed to pay MR. SAINT JOHN overtime pay.

6 37. Defendant TATITLEK engaged in the unlawful wage and hour
7 practice of causing MR. SAINT JOHN to work more than six days in seven in
8 violation of Labor Code §§ 551 and 552.

9 38. Defendant TATITLEK either failed to provide or regularly
10 failed to allow MR. SAINT JOHN to take: (1) an uninterrupted 30 minute meal
11 period when employed for a work period of more than 5 hours per day as required
12 by Labor Code §§ 512 and 226.7; and (2) a second uninterrupted 30 minute meal
13 period when employed for a work period of more than 10 hours per day as required
14 by Labor Code §§ 512 and 226.7; and (3) a ten (10) minute rest period for every
15 four (4) hours worked. In this regard, Defendant TATITLEK knew or should have
16 known that its employees, including PLAINTIFFS, were not being provided with
17 or were not being allowed to take their meal and rest periods and defendant
18 TATITLEK did not take steps to address the situation.

19 39. During his employment, Defendant TATITLEK violated
20 Section 5 of California's IWC Wage Order (i.e., California's "reporting time" or
21 "show up" pay law) by requiring MR. SAINT JOHN to report to work on "Day
22 Zero" of the training exercises and not paying him the greater of (1) half the
23 employee's usual or scheduled day's work (up to a maximum of four hours), or (2)
24 two hours at the employee's regular rate of pay.

25 40. Defendant TATITLEK violated Labor Code Section 201 by
26 not immediately paying MR. SAINT JOHN when it released him after he
27 completed each specific job assignment for which he was hired. Accordingly,
28 pursuant to Labor Code Section 203, defendant TATITLEK is liable MR. SAINT

1 JOHN for a waiting time penalty of up to thirty (30) day's pay for each such job
2 assignment.

3 41. Defendant TATITLEK required MR. SAINT JOHN to spend
4 the night in re-worked Connex boxes that did not have electricity or lighting. As a
5 consequence, MR. SAINT JOHN necessarily and reasonably had to purchase items
6 (i.e., lanterns, flashlights, and batteries) to use for lighting at night. Defendant
7 TATITLEK violated Labor Code Section 2802 by not indemnifying MR. SAINT
8 JOHN for these expenses.

9 42. California law provides that sleeping time while on duty
10 constitutes compensable "hours worked" unless both of the following requirements
11 are satisfied: (1) the employer and MR. SAINT JOHN enter into an agreement to
12 exclude from hours worked a bona fide regularly scheduled sleeping period; and
13 (2) the following non-waiveable conditions are satisfied: (a) MR. SAINT JOHN is
14 able to enjoy an uninterrupted 5 hours of sleep; and (b) any interruptions of the
15 sleeping period by a call to duty are counted as hours worked. Because defendant
16 Tatitlek neither entered into such an agreement with MR. SAINT JOHN nor
17 satisfied the non-waiveable conditions (i.e., MR. SAINT JOHN was neither able to
18 enjoy an uninterrupted 5 hours of sleep nor was he compensated for time worked
19 when his sleep was interrupted by a call to duty), it was obligated to, but did not,
20 compensate MR. SAINT JOHN for sleep time.

21 43. In violation of Labor Code § 203, defendant TATITLEK did
22 not pay MR. SAINT JOHN his total wages owed following the termination of his
23 employment. Hence, a waiting time penalty, in addition to the wages owed, in the
24 amount equal to 30 days' of his total wages is due to MR. SAINT JOHN.

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PLAINTIFF FLORES' FACTUAL ALLEGATIONS

44. In or about June 2006, MR. FLORES began employment with Defendant TATITLEK. MR. FLORES' employment has continued through about the present. At no time before, during, or after these periods of employment did MR. FLORES enter into a written agreement defendant TATITLEK with respect to the taking of an on-the-job paid meal period.

45. During his employment, MR. FLORES was a "role player."

46. During his employment, MR. FLORES was improperly treated by TATITLEK as an independent contractor and not as an employee. As a result of TATITLEK's mis-classification, TATITLEK did not pay all of the employment-related taxes (including social security taxes) that should have been borne by it – thereby causing Mr. Flores to incur liability for both the employee and employer portion of social security taxes owed on his wages. Similarly, as a result of defendant TATITLEK's mis-classification, TATITLEK failed to provide MR. FLORES with itemized wage statements as required by Labor Code § 226.

47. During his employment, defendant TATITLEK failed to pay MR. FLORES prevailing wages and benefits.

48. During each period of employment, MR. FLORES worked more than 8 hours in a day and more than 40 hours in a week and defendant TATITLEK failed to pay MR. FLORES overtime pay.

49. Defendant TATITLEK engaged in the unlawful wage and hour practice of causing MR. FLORES to work more than six days in seven in violation of Labor Code §§ 551 and 552.

50. During his employment, Defendant TATITLEK violated Section 5 of California's IWC Wage Order (i.e., California's "reporting time" or "show up" pay law) by requiring MR. FLORES to report to work on "Day Zero" of the training exercises and not paying him the greater of (1) half the employee's

1 usual or scheduled day's work (up to a maximum of four hours), or (2) two hours
2 at the employee's regular rate of pay.

3 51. Defendant TATITLEK violated Labor Code Section 201 by
4 not immediately paying MR. FLORES when it released him after he completed
5 each specific job assignment for which he was hired. Accordingly, pursuant to
6 Labor Code Section 203, defendant TATITLEK is liable MR. FLORES for a
7 waiting time penalty of up to thirty (30) day's pay for each such job assignment.

8 52. Defendant TATITLEK required MR. FLORES to spend the
9 night in re-worked Connex boxes that did not have electricity or lighting. As a
10 consequence, MR. FLORES necessarily and reasonably had to purchase items (i.e.,
11 lanterns, flashlights, and batteries) to use for lighting at night. Defendant
12 TATITLEK violated Labor Code Section 2802 by not indemnifying MR. FLORES
13 for these expenses.

14 53. California law provides that sleeping time while on duty
15 constitutes compensable "hours worked" unless both of the following requirements
16 are satisfied: (1) the employer and MR. FLORES enter into an agreement to
17 exclude from hours worked a bona fide regularly scheduled sleeping period; and
18 (2) the following non-waiveable conditions are satisfied: (a) MR. FLORES is able
19 to enjoy an uninterrupted 5 hours of sleep; and (b) any interruptions of the sleeping
20 period by a call to duty are counted as hours worked. Because defendant Tatitlek
21 neither entered into such an agreement with MR. FLORES nor satisfied the non-
22 waiveable conditions (i.e., MR. FLORES was neither able to enjoy an
23 uninterrupted 5 hours of sleep nor was he compensated for time worked when his
24 sleep was interrupted by a call to duty), it was obligated to, but did not,
25 compensate MR. FLORES for sleep time.

26 54. Defendant TATITLEK either failed to provide or did not allow
27 MR. FLORES to take: (1) an uninterrupted 30 minute meal period when employed
28 for a work period of more than 5 hours per day as required by Labor Code §§ 512

1 and 226.7; and (2) a second uninterrupted 30 minute meal period when employed
2 for a work period of more than 10 hours per day as required by Labor Code §§
3 512 and 226.7; and (3) a ten (10) minute rest period for every four (4) hours
4 worked. In this regard, Defendant TATITLEK knew or should have known that its
5 employees, including PLAINTIFFS, either were not being provided with or were
6 not being allowed to take their meal and rest periods and defendant TATITLEK
7 did not take steps to address the situation.

8 55. On or about September 2007, DEFENDANTS offered to pay
9 MR. FLORES, and other members of the class, approximately \$1,450.00 to
10 participate in a four day role playing exercise. MR. FLORES accepted
11 DEFENDANTS' offer (as did between approximately 200 and 280 other
12 employees). [Defendants also may have induced Mr. Flores (and other Tatitlek
13 employees) to sign paperwork fraudulently providing for pay at a lower rate than
14 was promised, but Plaintiffs are not now able to address this issue because
15 Defendants violated Labor Code § 432 by failing to comply with Mr. Flores'
16 October 18, 2008 request for all writings that he signed in conjunction with his
17 employment by Tatitlek. Plaintiffs will seek to amend their complaint and plead
18 more facts addressing this issue if and when they receive this information and it is
19 necessary.] After MR. FLORES, and other members of the class, performed as
20 specified by the contract, Defendants breached the contract by paying MR.
21 FLORES (and other members of the class) \$1,000.00 instead of the promised
22 \$1,450.00.

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PLAINTIFF AGUILAR'S FACTUAL ALLEGATIONS

56. In or about April 2006, MR. AGUILAR began employment with Defendant TATITLEK. This initial period of employment lasted until in or about September 2006.

57. In or about July 2007, MR. AGUILAR again began employment with defendant TATITLEK. This second period of employment lasted until in or about February 2008. At no time before, during, or after these periods of employment did MR. AGUILAR enter into a written agreement defendant TATITLEK with respect to the taking of an on-the-job paid meal period.

58. During each period of employment MR. AGUILAR was hired as a role player.

59. During the first period of employment, MR. AGUILAR was improperly treated by Defendant TATITLEK as an independent contractor and not as an employee. As a result of defendant TATITLEK's mis-classification, defendant TATITLEK did not pay all of the employment-related taxes (including social security taxes) that should have been borne by it. Similarly, as a result of defendant TATITLEK's mis-classification, defendant TATITLEK failed to provide MR. AGUILAR with itemized wage statements as required by Labor Code § 226.

60. During each period of employment, defendant TATITLEK failed to pay MR. AGUILAR prevailing wages and benefits.

61. During each period of employment, MR. AGUILAR worked more than 8 hours in a day and more than 40 hours in a week and defendant TATITLEK failed to pay MR. AGUILAR overtime pay.

62. Defendant TATITLEK engaged in the unlawful wage and hour practice of causing MR. AGUILAR to work more than six days in seven in violation of Labor Code §§ 551 and 552.

1 63. Defendant TATITLEK either failed to provide or did not allow
2 MR. AGUILAR to take: (1) an uninterrupted 30 minute meal period when
3 employed for a work period of more than 5 hours per day as required by Labor
4 Code §§ 512 and 226.7; (2) a second uninterrupted 30 minute meal period when
5 employed for a work period of more than 10 hours per day as required by Labor
6 Code §§ 512 and 226.7; and (3) a ten (10) minute rest period for every four (4)
7 hours worked. In this regard, Defendant TATITLEK knew or should have known
8 that its employees, including PLAINTIFFS, either were not receiving or were not
9 being allowed to take their meal and rest periods and defendant TATITLEK did
10 not take steps to address the situation.

11 64. In violation of Labor Code § 203, defendant TATITLEK did
12 not pay MR. AGUILAR his total wages owed following the termination of his
13 employment. Hence, a waiting time penalty, in addition to the wages owed, in the
14 amount equal to 30 days' of his total wages is due to MR. AGUILAR.

15 65. During his employment, Defendant TATITLEK violated
16 Section 5 of California's IWC Wage Order (i.e., California's "reporting time" or
17 "show up" pay law) by requiring MR. AGUILAR to report to work on "Day Zero"
18 of the training exercises and not paying him the greater of (1) half the employee's
19 usual or scheduled day's work (up to a maximum of four hours), or (2) two hours
20 at the employee's regular rate of pay.

21 66. Defendant TATITLEK violated Labor Code Section 201 by
22 not immediately paying MR. AGUILAR when it released him after he completed
23 each specific job assignment for which he was hired. Accordingly, pursuant to
24 Labor Code Section 203, defendant TATITLEK is liable MR. AGUILAR for a
25 waiting time penalty of up to thirty (30) day's pay for each such job assignment.

26 67. Defendant TATITLEK required MR. AGUILAR to spend the
27 night in re-worked Connex boxes that did not have electricity or lighting. As a
28 consequence, MR. AGUILAR necessarily and reasonably had to purchase items

1 (i.e., lanterns, flashlights, and batteries) to use for lighting at night. Defendant
2 TATITLEK violated Labor Code Section 2802 by not indemnifying MR.
3 AGUILAR for these expenses.

4 68. California law provides that sleeping time while on duty
5 constitutes compensable "hours worked" unless both of the following requirements
6 are satisfied: (1) the employer and MR. AGUILAR enter into an agreement to
7 exclude from hours worked a bona fide regularly scheduled sleeping period; and
8 (2) the following non-waiveable conditions are satisfied: (a) MR. AGUILAR is
9 able to enjoy an uninterrupted 5 hours of sleep; and (b) any interruptions of the
10 sleeping period by a call to duty are counted as hours worked. Because defendant
11 Tatitlek neither entered into such an agreement with MR. AGUILAR nor satisfied
12 the non-waiveable conditions (i.e., MR. AGUILAR was neither able to enjoy an
13 uninterrupted 5 hours of sleep nor was he compensated for time worked when his
14 sleep was interrupted by a call to duty), it was obligated to, but did not,
15 compensate MR. AGUILAR for sleep time.

16 69. On or about September 2007, Defendants offered to pay Mr.
17 Aguilar and other members of the class approximately \$2,698 to participate in a
18 ten day role playing exercise. Mr. Aguilar accepted Defendants' offer (as did
19 about 100 other employees). After Mr. Aguilar and other members of the class
20 performed as specified by the contract, Defendants breached the contract by paying
21 Mr. Aguilar (and other members of the class) only about \$2,400 instead of the
22 promised \$2,698.

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CLASS ACTION ALLEGATIONS

70. PLAINTIFFS bring this action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure § 382.

71. All claims alleged herein under arise under California law for which PLAINTIFFS seek relief authorized under California law.

72. The class that PLAINTIFFS seek to represent is composed of and defined as follows:

Subclass One – All individuals hired by defendant TATITLEK to work at the Marine Corps base at Twentynine Palms, California within four (4) years of the filing of this complaint who were misclassified as independent contractors rather than as employees.

Subclass Two – All of defendant TATITLEK non-exempt employees working at the Marine Corps base at Twentynine Palms, California within four (4) years of the filing of this complaint who were not paid overtime.

Subclass Three – All of defendant TATITLEK's non-exempt employees working at the Marine Corps base at Twentynine Palms, California within four (4) years of the filing of this complaint who were not given itemized wage statements as required by Labor Code § 226.

Subclass Four – All of defendant TATITLEK non-exempt employees working at the Marine Corps base at Twentynine Palms, California within four (4) years of the filing of this complaint who were not paid prevailing wages and benefits.

Subclass Five – All of defendant TATITLEK non-exempt employees working at the Marine Corps base at Twentynine Palms, California within four (4) years of the filing of this complaint who were neither provided with their meal and/or rest period nor given one hour additional pay for each work day that the

1 meal or rest period was not provided.

2 **Subclass Six** – All of defendant TATITLEK non-exempt employees
3 working at the Marine Corps base at Twentynine Palms, California whose
4 employment was terminated within four (4) years of the filing of this complaint
5 who were not paid his or her full wages: (a) at the time of the termination his or her
6 employment if the termination was involuntary or (b) within 72 hour if the
7 termination was voluntary.

8 **Subclass Seven** – All of defendant TATITLEK non-exempt employees
9 working at the Marine Corps base at Twentynine Palms, California who on or
10 about September 2007 were offered \$1,450 in pay to work certain particular role
11 playing assignments but later were told they would receive only approximately
12 \$1,000 per assignment. This “bait and switch” happened again (approximately)
13 two to six times.

14 **Subclass Eight** – All of defendant TATITLEK non-exempt employees
15 working at the Marine Corps base at Twentynine Palms, California who on or
16 about September 2007 were offered \$2,698 in pay to work certain particular role
17 playing assignments but later were told they would receive only approximately
18 \$2,400 per assignment. This “bait and switch” happened again (approximately)
19 two to four times.

20 **Subclass Nine** - All of defendant TATITLEK non-exempt employees
21 working at the Marine Corps base at Twentynine Palms, California within four (4)
22 years of the filing of this complaint who Defendant TATITLEK required to report
23 to work on “Day Zero” of the training exercises and who was not paid the greater
24 of (1) half the employee’s usual or scheduled day’s work (up to a maximum of four
25 hours), or (2) two hours at the employee’s regular rate of pay.

26 **Subclass Ten** - All of defendant TATITLEK non-exempt employees
27 working at the Marine Corps base at Twentynine Palms, California within four (4)
28 years of the filing of this complaint who Defendant TATITLEK did not

1 immediately pay when it released them after they completed each specific job
2 assignment for which they were hired (Accordingly, pursuant to Labor Code
3 Section 203, defendant TATITLEK is liable to each such employee for a waiting
4 time penalty of up to thirty (30) day's pay for each such job assignment).

5 **Subclass Eleven** - All of defendant TATITLEK non-exempt employees
6 working at the Marine Corps base at Twentynine Palms, California within four (4)
7 years of the filing of this complaint who Defendant TATITLEK required to spend
8 the night in re-worked Connex boxes that did not have electricity or lighting and
9 who, as a consequence, necessarily and reasonably had to purchase lanterns,
10 flashlights, and batteries to use for lighting at night (Accordingly, Defendant
11 TATITLEK violated Labor Code Section 2802 by not indemnifying the employees
12 for these expenses).

13 **Subclass Twelve** - All of defendant TATITLEK non-exempt employees
14 working at the Marine Corps base at Twentynine Palms, California within four (4)
15 years of the filing of this complaint with whom (1) Defendant TATITLEK did not
16 enter into an agreement to exclude from hours worked a bona fide regularly
17 scheduled sleeping period; or (2) where the following non-waiveable conditions
18 were not satisfied: (a) the employee is able to enjoy an uninterrupted 5 hours of
19 sleep; and (b) any interruptions of the sleeping period by a call to duty are counted
20 as hours worked. Because defendant Tatitlek neither entered into such an
21 agreement with its employees nor satisfied the non-waiveable conditions (i.e., its
22 employees were neither able to enjoy an uninterrupted 5 hours of sleep nor were
23 they compensated for time worked when their sleep was interrupted by a call to
24 duty), it was obligated to, but did not, compensate its employees for sleep time.

25 73. The members of the class are so numerous that joinder of all
26 members would be unfeasible and not practicable. The membership of the entire
27 class is unknown to PLAINTIFFS at this time, however, it is estimated that the
28 entire class is greater than 100 individuals, but the identity of such membership is

1 readily ascertainable via inspection of the personnel records and other documents
2 maintained by defendant TATITLEK.

3 74. There are common questions of law and fact as to the class
4 which predominate over questions affecting only individual members including,
5 without, limitation:

6 A. Whether defendant TATITLEK's misclassified the individuals
7 it had working at the Marine Corps base at Twentynine Palms, California as
8 independent contractors rather than as employees;

9 B. Whether defendant TATITLEK's policy and practice of failing
10 to provide wage statements as required by Labor Code § 226 to its employees
11 working at the Marine Corps base at Twentynine Palms, California is unlawful;

12 C. Whether defendant TATITLEK's policy and practice of failing
13 to reimburse employees working at the Marine Corps base at Twentynine Palms,
14 California for the expenses they incurred as a direct consequence of discharging
15 their duties and/or obeying the directions of defendant TATITLEK is unlawful
16 (e.g., the employer taxes that defendant TATITLEK should have paid but instead
17 were paid by the employees);

18 D. Whether defendant TATITLEK unlawfully failed to pay its
19 employees working at the Marine Corps base at Twentynine Palms, California
20 prevailing wages and benefits;

21 E. Whether defendant TATITLEK unlawfully failed to pay its
22 employees working at the Marine Corps base at Twentynine Palms, California
23 overtime;

24 F. Whether defendant TATITLEK unlawfully failed to provide its
25 employees working at the Marine Corps base at Twentynine Palms, California with
26 meal and/or rest periods;

27 G. Whether defendant TATITLEK unlawfully failed to pay one
28 hour of pay to each of those employees working at the Marine Corps base at